

IP 06-0008-CR 3 M/F USA v Gray  
Magistrate Kennard P. Foster

Signed on 01/30/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

USA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
GRAY, AUDRA E,	)	CAUSE NO. IP06-0008-CR-03-M/F
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. IP 06-08-CR- -M/F
	)	
AUDRA GRAY,	)	-03
DANIEL COOK,	)	-08
JEREMY YOUNG,	)	-12
JOSEPH GRIFFIN, and	)	-14
CHARLES CHILDRESS,	)	-16
	)	
Defendants.	)	

ENTRY AND ORDER OF DETENTION PENDING TRIAL

SUMMARY

The defendants are charged in an indictment returned on January 10, 2006 charging one count of conspiracy to possess with intent to distribute 5 kilogram or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II Narcotic Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1) and 846. The government moved for detention pursuant to 18 U.S.C. §§ 3142(e), (f)(1)(A), (f)(1)©), and (f)(2)(A) on the grounds that the defendants are charged with a drug trafficking offense with the maximum term of imprisonment of life as prescribed in the Controlled Substances Act, and the defendants are serious risks of flight, if released. The detention hearing was held on January 20, 2006. The United States appeared by Josh Minkler, Assistant United States Attorney. Audra Gray appeared in person and by her appointed counsel, Anthony Ratliff for Tom A. Brodnik. Daniel Cook

appeared in person and by his appointed counsel, Howard N. Bernstein. Jeremy Young appeared in person and by his appointed counsel, Joseph M. Cleary. Joseph Griffin appeared in person and by his appointed counsel, Victoria Bailey for Kimberly S. Robinson. Charles Childress appeared in person and by his retained counsel, Stephen W. Dillon.

At the detention hearing, the Government rested on the presumption established by the indictment, and testimony from United States Drug Enforcement Administration Task Force Officer Aaron Payne. The Court found that the indictment constituted probable cause to believe that the defendants committed the crime charged. The charge in the indictment gives rise to the presumptions that there is no condition or combination of conditions of release which will reasonably assure the safety of the community or that the defendants will not be serious risks to flee if released..

As to defendant Audra Gray, the evidence presented at the detention hearing did not rebut the presumptions that the defendant is a serious risk of flight, or rebut the presumption found in 18 U.S.C. § 3142(e) that the defendant is a danger to the community. Furthermore, the totality of the evidence presented demonstrates clearly and convincingly that there is no condition or a combination of conditions of release which will reasonably assure the safety of the community, and that by a preponderance of the evidence that the defendant will be a serious risk of flight if released. Consequently, the defendant was ordered detained.

As to defendant Daniel Cook, the evidence presented at the detention hearing did not rebut the presumptions that the defendant is a serious risk of flight, or rebut the presumption found in 18 U.S.C. § 3142(e) that the defendant is a danger to the community. Furthermore, the totality of the evidence presented demonstrates clearly and convincingly that there is no condition or a combination of conditions of release which will reasonably assure the safety of the

community, and that by a preponderance of the evidence that the defendant will be a serious risk of flight if released. Consequently, the defendant was ordered detained.

As to defendant Jeremy Young, the evidence presented at the detention hearing did not rebut the presumptions that the defendant is a serious risk of flight, or rebut the presumption found in 18 U.S.C. § 3142(e) that the defendant is a danger to the community. Furthermore, the totality of the evidence presented demonstrates clearly and convincingly that there is no condition or a combination of conditions of release which will reasonably assure the safety of the community, and that by a preponderance of the evidence that the defendant will be a serious risk of flight if released. Consequently, the defendant was ordered detained.

As to defendant Joseph Griffin, the evidence presented at the detention hearing did not rebut the presumptions that the defendant is a serious risk of flight, or rebut the presumption found in 18 U.S.C. § 3142(e) that the defendant is a danger to the community. Furthermore, the totality of the evidence presented demonstrates clearly and convincingly that there is no condition or a combination of conditions of release which will reasonably assure the safety of the community, and that by a preponderance of the evidence that the defendant will be a serious risk of flight if released. Consequently, the defendant was ordered detained.

As to defendant Charles Childress, the evidence presented at the detention hearing did rebut the presumption that the defendant is a serious risk of flight. However, it did not rebut the presumption found in 18 U.S.C. § 3142(e) that the defendant is a danger to the community. Furthermore, the totality of the evidence presented demonstrates clearly and convincingly that there is no condition or a combination of conditions of release which will reasonably assure the safety of the community, and that by a preponderance of the evidence that the defendant will be a serious risk of flight if released. Consequently, the defendant was ordered detained.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

1. The defendants are charged in an indictment returned on January 10, 2006 charging one count of conspiracy to possess with intent to distribute 5 kilogram or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II Narcotic Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1) and 846.

2. Based on the amount of cocaine alleged in the indictment, the penalty for the conspiracy to possess with the intent to distribute and to distribute 5 kilograms or more of cocaine in violation of 21 U.S.C. §§ 841(a)(1), 841(b) and 846 is a mandatory minimum sentence of 10 years and a maximum of life imprisonment. Defendant Charles Childress has a prior felony conviction for a drug offense. If the government files an information alleging the prior conviction, the mandatory minimum sentence would be 20 years.

3. The Court takes judicial notice of the Indictment in this cause. The Court further incorporates the evidence admitted during the detention hearing, as if set forth here.

4. The government submitted the matter on the indictment and the testimony of Task Force Officer Aaron Payne. Task Force Officer Payne testified that he was one of the lead investigators into this matter, and that he was familiar with controlled purchases of cocaine, seizures of cocaine, electronic surveillance (including Title III Wiretaps on four telephones used by the co-conspirators) visual surveillance, and search warrants executed as part of a year long investigation conducted by the United States Drug Enforcement Administration and the Indiana State Police. Payne testified that the search warrants and arrests of the defendants were scheduled to take place during the morning hours of January 12, 2006. Payne further testified that on January 11, 2006, Joseph Griffin contacted one of the leaders of the conspiracy, Randy

Thomas, and advised him that “there are a bunch of cops at the Armory and they have a list of names, so get out.” Payne testified that defendants Gray and Childress, among others, received this message, and they had fled their residences after receiving the information; thus obstructing the Court’s order that they be arrested. Payne also testified that in his experience if narcotics defendants are aware of a police action such as this, they will destroy and/or conceal evidence.

Payne testified that Audra Gray was a heavy user of crack cocaine and had access to firearms during the conspiracy. This was confirmed by Gray’s positive test for cocaine when she was arrested and the 13 firearms recovered in her residence when it was searched.

Payne testified that the residence of Daniel Cook, located at 9716 W. Conservation Lake Road, Deputy, Indiana was used as a “stash house,” during the conspiracy. Payne testified that John Scruggs and Randy Thomas maintained sizeable amounts of easily accessible cash to purchase large quantities of cocaine as well as large quantities of cocaine to distribute to the mid-level distributors at this residence. Payne further testified that Scruggs and Thomas collected money, payed for the cocaine fronted to them by their sources of supply, Carlos Torres, Francisco Betancourt, and Nestor Carmona, discussed the cocaine conspiracy and engaged in cocaine transactions with the sources of supply on numerous occasions at Cook’s residence. This was all done with the knowledge and permission of Cook who, more often than not, was present during the transactions. Payne testified that Cook even provided the telephone numbers for the sources of supply to Thomas when he forgot. The search of Cook’s residence yielded cocaine, marijuana, and firearms.

With regard to Joseph Griffin, Payne testified that a search of Griffin’s residence yielded cocaine packaged for redistribution and a .357 pistol that Griffin claimed that Thomas gave him “for protection from the Mexicans.”

With regard to Jeremy Young, Payne testified that his residence was searched by U.S. Drug Enforcement Administration Special Agent Kareem Jacox. Jacox recovered a “non-working” methamphetamine laboratory which he described as a lab with all the tools necessary to manufacture methamphetamine, but no finished product. The Court notes that Young tested positive for amphetamines (which is an indicator for methamphetamine use) when he was arrested.

With regard to Charles Childress, Payne testified that Childress telephoned Thomas and informed Thomas that he had been tipped off about the arrests. Griffin fled his residence, and did not go to work the next day. Childress concealed approximately \$8,950.00 in United States currency at the residence of Jess Thevonow which the Indiana State Police recovered when executing a search warrant On January 13, 2006.

Defense counsel for all defendants cross-examined Task Force Officer Payne on all issues pending before the Court. The Court admitted the PS3 for all defendants. Ms. Gray has the following criminal convictions: 3/01 B Misdemeanor Visiting a Common Nuisance; 12/03 and 5/04 Public Intoxication. She is unemployed. Dan Cook was convicted of a Class A Misdemeanor OWI on January 25, 2005 and was on probation during this offense and at the time of his arrest. Jeremy Young was charged with A Felony Dealing in Cocaine on February 25, 2005 in Jefferson County, Indiana Circuit Court. Mr. Young was on conditions of release from that charge during this offense and on the date of his arrest. Joseph Griffin has multiple felony convictions including April 3, 2003 convictions for Burglary of a Dwelling and Robbery. Griffin has numerous pending charges in Jefferson County, Indiana Circuit Court. Mr. Griffin was on conditions of release from those charges during the instant offense and at the time of his

arrest. Charles Childress has a prior felony conviction on February 22, 2003 for D Felony Maintaining a Common Nuisance.

5. The Court finds that the indictment establishes probable cause for the offense charged, and the rebuttable presumptions arise that the defendants are serious risks of flight and dangers to the community. 18 U.S.C. § 3142(e).

6. In the first instance, with regard to Ms. Gray, Mr. Cook, Mr. Young, and Mr. Griffin the evidence at the detention hearing does not rebut the presumptions found in 18 U.S.C. § 3142(e) that the defendant is a serious risk of flight and a danger to the community. With respect to Mr. Childress, the evidence at the detention hearing does rebut the presumption found in 18 U.S.C. § 3142(e) that the defendant is a serious risk of flight, but does not rebut the presumption that Mr. Childress is a danger to the community. Furthermore, the totality of the evidence presented demonstrates clearly and convincingly that there is no condition or a combination of conditions of release which will reasonably assure the safety of the community, and that by a preponderance of the evidence that the defendants will be a serious risks of flight if released. Therefore, Audra Gray, Daniel Cook, Jeremy Young, Joseph Griffin, and Charles Childress are ORDERED DETAINED.

7. When a motion for pretrial detention is made, the Court engages a two-step analysis: first, the judicial officer determines whether one of six conditions exists for considering a defendant for pretrial detention; second, after a hearing, the Court determines whether the standard for pretrial detention is met. *United States v. Friedman*, 837 F.2d 48, 49 (2nd Cir. 1988).

A defendant may be considered for pretrial detention in only six circumstances: when a case involves one of either four types of offenses or two types of risks. A defendant is eligible



for detention upon motion by the United States in cases involving (1) a crime of violence, (2) an offense with a maximum punishment of life imprisonment or death, (3) specified drug offenses carrying a maximum term of imprisonment of ten years or more, or (4) any felony where the defendant has two or more federal convictions for the above offenses or state convictions for identical offenses, 18 U.S.C. § 3142(f)(1), or, upon motion by the United States or the Court *sua sponte*, in cases involving (5) a serious risk that the person will flee, or (6) a serious risk that the defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, a prospective witness or juror. *Id.*, § 3142(f)(2); *United States v. Sloan*, 820 F.Supp. 1133, 1135-36 (S.D. Ind. 1993). The existence of any of these six conditions triggers the detention hearing which is a prerequisite for an order of pretrial detention. 18 U.S.C. § 3142(e). The judicial officer determines the existence of these conditions by a preponderance of the evidence. *Friedman*, 837 F.2d at 49. See *United States v. DeBeir*, 16 F.Supp.2d 592, 595 (D. Md. 1998) (serious risk of flight); *United States v. Carter*, 996 F.Supp. 260, 265 (W.D. N.Y. 1998) (same). In this case, the United States moves for detention pursuant to 18 U.S.C. §§ 3142(e), (f)(1)(B), (f)(1)(C), and (f)(2)(A) and the Court has found these bases exist.

Once it is determined that a defendant qualifies under any of the six conditions of § 3142(f), the court may order a defendant detained before trial if the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community. 18 U.S.C. § 3142(e). Detention may be based on a showing of either dangerousness or risk of flight; proof of both is not required. *United States v. Fortna*, 769 F.2d 243, 249 (5th Cir. 1985). With respect to reasonably assuring the appearance of the defendant, the United States bears the burden of proof by a preponderance of the evidence. *United States v. Portes*, 786 F.2d 758, 765 (7th Cir. 1985);

*United States v. Himler*, 797 F.2d 156, 161 (3rd Cir. 1986); *United States v. Vortis*, 785 F.2d 327, 328-29 (D.C. Cir.), *cert. denied*, 479 U.S. 841, 107 S.Ct. 148, 93 L.Ed.2d 89 (1986); *Fortna*, 769 F.2d at 250; *United States v. Chimurenga*, 760 F.2d 400, 405-06 (2nd Cir. 1985); *United States v. Orta*, 760 F.2d 887, 891 & n. 20 (8th Cir. 1985); *United States v. Leibowitz*, 652 F.Supp. 591, 596 (N.D. Ind. 1987). With respect to reasonably assuring the safety of any other person and the community, the United States bears the burden of proving its allegations by clear and convincing evidence. 18 U.S.C. § 3142(f); *United States v. Salerno*, 481 U.S. 739, 742, 107 S.Ct. 2095, 2099, 95 L.Ed.2d 697 (1987); *Portes*, 786 F.2d at 764; *Orta*, 760 F.2d at 891 & n. 18; *Leibowitz*, 652 F.Supp. at 596; *United States v. Knight*, 636 F.Supp. 1462, 1465 (S.D. Fla. 1986). Clear and convincing evidence is something more than a preponderance of the evidence but less than proof beyond a reasonable doubt. *Addington v. Texas*, 441 U.S. 418, 431-33, 99 S.Ct. 1804, 1812-13, 60 L.Ed.2d 323 (1979). The standard for pretrial detention is “reasonable assurance”; a court may not order pretrial detention because there is no condition or combination of conditions which would *guarantee* the defendant’s appearance or the safety of the community. *Portes*, 786 F.2d at 764 n. 7; *Fortna*, 769 F.2d at 250; *Orta*, 760 F.2d at 891-92.

8. A rebuttable presumption that no condition or combination of conditions will reasonably assure the defendant’s appearance or the safety of any other person and the community arises when the judicial officer finds that there is probable cause to believe that the defendant committed an offense under (1) the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*; the Controlled Substances Import and Export Act, 21 U.S.C. § 951 *et seq.*, or the Maritime Drug Law Enforcement Act, 46 U.S.C. App. § 1901 *et seq.*, for which a maximum term of imprisonment of ten years is prescribed; (2) 18 U.S.C. § 924(c); (3) 18 U.S.C. § 956(a); or (4) 18 U.S.C. § 2332b. 18 U.S.C. § 3142(e).

This presumption creates a burden of production upon a defendant, not a burden of persuasion: the defendant must produce a basis for believing that he will appear as required and will not pose a danger to the community. Although most rebuttable presumptions disappear when any evidence is presented in opposition, a § 3142(e) presumption is not such a “bursting bubble”. *Portes*, 786 F.2d at 765; *United States v. Jessup*, 757 F.2d 378, 383 (1st Cir. 1985). Therefore, when a defendant has rebutted a presumption by producing some evidence contrary to it, a judge should still give weight to Congress’ finding and direction that repeat offenders involved in crimes of violence or drug trafficking, as a general rule, pose special risks of flight and dangers to the community. *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986) (presumption of dangerousness); *United States v. Diaz*, 777 F.2d 1236, 1238 (7th Cir. 1985); *Jessup*, 757 F.2d at 383.

The Court has found the presumptions arise in this case. With regard to Ms. Gray, Mr. Cook, Mr. Young, and Mr. Griffin the evidence at the detention hearing did not rebut the presumptions that the defendants are serious risks of flight and dangers to the community. With respect to Mr. Childress, the evidence at the detention hearing did rebut the presumption that the defendant is a serious risk of flight, but did not rebut the presumption that Mr. Childress is a danger to the community.

10. Assuming *arguendo* the defendants had rebutted both of the presumptions, they would still be detained. The Court considers the evidence presented on the issue of release or detention weighed in accordance with the factors set forth in 18 U.S.C. § 3142(g) and the legal standards set forth above. Among the factors considered both on the issue of flight and dangerousness to the community are the defendant’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community

ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings. 18 U.S.C. § 3142(g)(3)(A). The presence of community ties and related ties have been found to have no correlation with the issue of safety of the community. *United States v. Delker*, 757 F.2d 1390, 1396 (3rd Cir. 1985); S.Rep. No. 98-225, 98th Cong., 1st Sess. at 24, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3182, 3207-08.

11. In this regard, the Court finds and concludes that the evidence in this case demonstrates the following:

a. This case charges the defendants based on an incipient conspiracy involving large quantities of cocaine. Cocaine was purchased during controlled purchases, recovered during law enforcement interdictions of cocaine couriers, and seized pursuant to search warrants authorized by this Court. Each of the defendants participated in this ongoing conspiracy for well over one year. This demonstrates that this crime and each of the defendants' conduct involves a narcotic drug.

b. The evidence demonstrates a strong probability of conviction as to all defendants.

c. Defendant Childress faces a possible mandatory sentences of 20 years imprisonment. The remaining defendants face a mandatory sentence of 10 years imprisonment. These mandatory sentences when coupled those defendants prior criminal history, substantially increases the seriousness of their risk for flight.

d. Mr. Griffin tipped off Defendant Gray and Defendant Childress as to the arrest warrants issued in this case. Gray and Childress fled from law enforcement and concealed evidence. This substantially increases the seriousness of their risk for flight or their risk to obstruct justice.

e. During the course of the conspiracy members of the conspiracy possessed firearms, including assault rifles, shotguns, pistols and revolvers. Firearms are a “tool of the trade” for a drug trafficker, as they are utilized to safeguard narcotics, United States currency, and the physical well-being of the narcotics trafficker from rival traffickers. The Court finds that the use and possession of firearms during this conspiracy was foreseeable to all defendants, including defendants Gray, Cook, Young, Griffin, and Childress. Indeed, defendants Gray, Cook and Griffin were all found to have loaded firearms in their residences when those residences were searched. Coconspirators are liable for all foreseeable acts committed in furtherance of the conspiracy, *Pinkerton v. United States*, 328 U.S. 640 (1946). Therefore, the Court finds that the defendants have violated Title 18, United States Code, Section 924(c)(1), possession of a firearm in furtherance of a drug trafficking crime. The possession of firearms along with a highly addictive drug such as cocaine increases the risk of violence exponentially. It further clearly and convincingly demonstrates a specific danger to the community which would be created if the Court were to release the defendants.

f. The evidence that defendants Gray, Cook, Griffin, Young, and Childress committed the instant offenses either while on bond, probation or soon after release from a Court ordered sentence on other charges clearly and convincingly demonstrate the probable inability of any condition or combination of conditions of release to reasonably assure that they will not return to criminal activity or threaten the well-being of the community. 18 U.S.C. § 3142(g)(3) and (4).

g. The Court having weighed the evidence regarding the factors found in 18 U.S.C. § 3142(g), and based upon the totality of evidence set forth above, concludes that defendants have not rebutted the presumptions in favor of detention, and should be

detained. Furthermore, they are, by the preponderance of the evidence, serious risks of flight and clearly and convincingly dangers to the community.

WHEREFORE, Audra Gray, Daniel Cook, Jeremy Young, Joseph Griffin, and Charles Childress are hereby committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. He shall be afforded a reasonable opportunity for private consultation with defense counsel. Upon order of this Court or on request of an attorney for the government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with the Court proceeding.

Dated this \_\_\_\_\_ day of January, 2006.

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Kennard P. Foster, Magistrate Judge  
United States District Court  
Southern District of Indiana

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